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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

SORRELL, ERON J

ART UNIT	PAPER NUMBER
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2182

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/746,301

Applicant(s)

PHAM ET AL.

Examiner

Eron J Sorrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/21/00 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/23/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,4-8,10-14, and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fawcett (U.S. Patent No. 5,845,077).

3. Referring to method claim 1, system claim 8, logic coded in media claim 14, and apparatus claim 21, Fawcett discloses a method, system and apparatus, for verifying a software upgrade for a communication device comprising:

determining a plurality of transient variable maintained by a communication device executing first software (see lines 23-56 of column 7; Note the date and directory location are transient variables as they can change without modifying the application).

comparing a first variable set maintained by the communication device to a second variable set maintained by the

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second communication device executing second software to identify changed variables (see lines 23-56 of column 7).

indicating a failure of the verification if at least one of the changed variables does not match one of the transient variables (see lines 45-56 of column 7; Note that if an application upgrade is indicated and flagged as available (a newer version exists), it has not been verified that the communication device is using the upgraded software).

4. Referring to method claim 4, system claim 10, and logic coded in media claim 17, Fawcett teaches step of comparing comprises:

loading the communication device with the first software (see lines 23-56 of column 7);

determining the first variable set (see lines 23-56 of column 7);

loading the communication device with the second software (see lines 23-56 of column 7);

determining the second variable set (see lines 23-56 of column 7);

comparing the first variable set to the second variable set to identify the changed variables (see lines 23-56 of column 7).

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5. Referring to method claim 5, system claim 11, and logic coded in media claim 18, Fawcett teaches the steps of determining, comparing, and indicating are performed by a software management system remotely coupled to the communication device using a packet network (see line 60 of column 4 to line 27 of column 5 and lines 9-11 of column 6).

6. Referring to method claim 6, system claim 12, and logic coded in media claim 19, Fawcett teaches the first and second variable set comprise at least a portion of a managed information base (MIB) maintained by the communication device (see lines 29-47 of column 5; note the database is the MIB).

7. Referring to method claim 7, system claim 13, and logic coded in media claim 18, Fawcett teaches generating the first variable set comprises:

issuing a query to the communication device for a specified variable (see lines 23-44 of column 7);

receiving a value for the specified variable from the communication device (see lines 23-44 of column 7;

repeating the steps of querying and receiving for each variable maintained in the first variable set (see lines 23-44 of column 7).

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 2,9,15, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fawcett in view of Hopmann et al (U.S. Patent No. 6,694,335 hereinafter Hopmann).

10. Referring to method claim 2, system claim 9, logic coded in media claim 15, and apparatus claim 22, Fawcett fails to teach the step of determining a plurality of transient variables comprises:

determining a first copy of a variable set maintained by the communication device executing first software;

determining a second copy of a variable set maintained by the communication device executing first software;

comparing the first copy to the second copy to identify the transient variables.

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Hopmann teaches a step for determining a plurality of transient variables comprising determining a first copy of a variable set maintained by the communication device executing first software (see lines 3-19 of column 5);

determining a second copy of a variable set maintained by the communication device executing first software (see lines 3-19 of column 5);

comparing the first copy to the second copy to identify the transient variables (see lines 3-19 of column 5).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system and method of Fawcett with the above teachings of Hopmann. One of ordinary skill in the art would have been motivated to make such modification in order to maintain synchronization between the communication devices as suggested by Hopmann (see lines 3-19 of column 5).

11. Claims 3 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Fawcett in view of Shaw (U.S. Patent No. 6,381,741).

12. Referring to method claim 3 and logic coded in media claim 16, Fawcett fails to teach the limitation of repeating the steps

of determining, comparing, and indicating for a predetermined number of counts; and

indicating a pass of the verification if a failure has not been indicated after the predetermined number of counts.

Shaw teaches, in an analogous system, repeating the steps of determining, comparing, and indicating for a predetermined number of counts (see paragraph bridging columns 4 and 5); and

indicating a pass of the verification if a failure has not been indicated after the predetermined number of counts (see paragraph bridging columns 4 and 5).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system and method of Fawcett with the above teachings of Shaw. One of ordinary skill in the art would have been motivated to make such modification in order to ensure all of the segments of code that need updating are indeed updated as suggested by Shaw (see paragraph bridging columns 4 and 5).

Response to Arguments

13. Applicant's arguments filed 8/23/04 have been fully considered but they are not persuasive. The applicant argues:

1) "...the operation of Fawcett includes software of one device being compared to software being executed on another

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device, as opposed to comparing a first variable set maintained by the communication device executing first software to a second variable set maintained by the communication device executing second software (see last paragraph of page 8 of applicant's remarks).

As per argument 1, the Examiner disagrees. Fawcett teaches a user computer running a user update application (communication device executing first software) and an update service computer running a service update application (communication device executing second software) (see lines 48-60 of column 5).

Fawcett further teaches. Fawcett further teaches that data such as title, date, version, etc. (variables) are collected by the user update application and sent to the service update application to compare them to data located in a database (variables) accessible to the service update application to determine, inter alia, if new versions of software are available. Thus, Fawcett teaches comparing a first variable set maintained by the communication device executing first software to a second variable set maintained by the communication device executing second software.

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

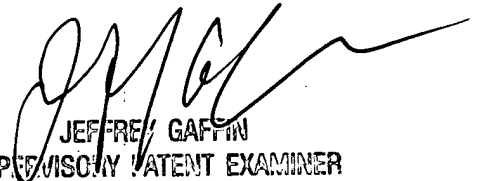
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eron J Sorrell whose telephone number is 571 272-4160. The examiner can normally be reached on Monday-Friday 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A Gaffin can be reached on 571 272-4146. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EJS
November 17, 2004


JEFFREY GAFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100